TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 302

DISTRICT OF COLUMBIA, PETITIONER,

vs.

GERALDINE LITTLE, ALIAS MILDRED PARKER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 31, 1949.

CERTIORARI GRANTED NOVEMBER 7, 1949.

SUPREME COURT OF THE UNITED STATES

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INDEX

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[fol. 1]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1949

No. 10092

DISTRICT OF COLUMBIA, Appellant,

v.

GERALDINE LITTLE, Alias Mildred Parker, Appellee

On Appeal from the Municipal Court of Appeals for the District of Columbia

Before Prettyman and Proctor, JJ., and Alexander Holtzoff, District Judge, Sitting by Designation

Joint Appendix

[fols. 2-3] IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA, CRIMINAL DIVISION, JULY TERM, A. D. 1947

INFORMATION

THE DISTRICT OF COLUMBIA, ss:

Vernon E. West, Esq., Corporation Counsel, by Richard W. Barton, Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that Geraldine Little alias Mildred Parker late of the District of Columbia aforesaid, on the 9th day of * August and divers other days between that date and the date of the filing of this information in the

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* During argument in the Municipal Court of Appeals it was stipulated by counsel for the respective parties that the trial prosecutor moved at trial to amend the information to allege that the offense occurred on September 9th rather than August 9th, and that said motion was granted without opposition, but, by inadvertence, the record on appeal did not show the amendment.

year A. D. nineteen hundred and forty-seven, in the District of Columbia aforesaid, and on premises 1315—10th Street, northwest, did therein hinder, obstruct, and interfere with an inspector of the Health Department in the performance of his duty in carrying out the provisions of an Act of Congress the Health Regulations Contrary to and in violation of an Ordinance Act of Congress Health Regulations in such case made and provided and constituting a law of the District of Columbia.

Vernon E. West, Corporation Counsel.

[fol. 4] Personally appeared C. Abney this 10th day of September, A. D., 1947 and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

(Signed) R. W. Barton, Assistant Corporation Counsel in and for the District of Columbia.

Nov. 3, 1947. Plea Not Guilty. All testimony heard. Both parties given to 11/7/47 to present authorities. FG JPMcM.

Apr. 10, 1948. ME O'Connor, $25.00 or 10 days. Deft. notes intention of applying to Municipal Court of Appeals for an allowance of Appeal. Appeal bond set at $100.00. FG JPMcM.

IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA, CRIMINAL DIVISION

No. 38580

DISTRICT OF COLUMBIA

v.

GERALDINE LITTLE, Alias Mildred Parker

MEMORANDUM OPINION

The Health Regulation under which the prosecution is brought is as follows:

[fol. 5] "• • • • • • •

"(2) It shall be the duty of every person occupying any premises, or any part of any premises in the Dis-

trict of Columbia, or, if such premises be not occupied, of the owner thereof, to keep such premises or part, * * *, clean and wholesome. If upon inspection by the Health Officer or an inspector of the Health Department, it be determined that any such part thereof, or any building, yard, * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, as herein-fore specified, shall be notified and required to place same in a clean and wholesome condition; and in case any person shall fail or neglect to place said premises or part in such condition within the time allowed by said notice, he shall be liable to the penalties hereinafter provided."

* * * * * * *

"(10) That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition, and make a record of such examination; * * *."

* * * * * * *

"(12) That any person violating or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction in the Police Court, be punished by a fine of not less than $5.00 nor more than $45."

The charge against the defendant is that on the 9th day of August, 1947, and on premises 1315 10th Street, N. W., she did hinder, obstruct and interfere with an Inspector of the Health Department in the performance of his duties.

The contention of the defendant, through her attorney, [fol. 6] is that the Commissioners are without authority to pass said regulation; that said regulation is unreasonable and void; that the premises were the private dwelling of the defendant and that an entry or attempted entry of said premises over the objection of the defendant was an unlawful act and an invasion of her right of privacy and was a violation of her constitutional rights.

In *Dupont* v. *District of Columbia*, 20 App. 478, 488, the Court said:

> "Garbage, as we have seen, is necessarily composed largely of matter noisome even before its deposit in receptacles provided for it, and other matter mingled with it must necessarily partake of its offensive character. Moreover, it is a thing of almost hourly accumulation in every occupied house of a large city, and is therefore a constant menace to the health and comfort of thousands of people."

In *California Reduction Company* v. *Sanitary Reduction Works*, 199 U. S. 306, 318, the Supreme Court said:

> "In determining the validity of the ordinances in question it may be taken as firmly established in the jurisprudence of this court that the States possess, because they have never surrendered, the power—and therefore municipal bodies, under legislative sanction, may exercise the power—to prescribe such regulations as may be reasonable, necessary and appropriate, for the protection of the public health and comfort; and that no person has an absolute right 'to be at all times and in all circumstances wholly freed from restraint;' but 'persons and property are subject to all kinds of restraints; and burdens, in order to secure the general comfort, health, and general prosperity of the State'—the public, as represented by its constituted authorities, taking care always that no regulation, although adopted [fol. 7] for those ends shall violate rights secured by the fundamental laws nor interfere with the enjoyment of individual rights beyond the necessities of the case. Equally well settled is the principle that if a regulation, enacted by competent public authority avowedly for the protection of the public health, has a real, substantial relation to that object, the Courts will not strike it down upon grounds merely of public policy or expediency. * * * In the recent case of Dobbins v. Los Angeles, 195 U. S. 223, 235, this Court said that 'every intendment is to be made in favor of the lawfulness of the exercise of municipal power making regulations to promote the public health and safety, and that it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by

law in municipal corporations for the protection of local rights and the health and welfare of the people in the community.' "

The Court at page 321 further said:

"It is the duty, primarily, of a person on whose premises are garbage and refuse material to see to it, by proper diligence, that no nuisance arises therefrom which endangers the public health. The householder may be compelled to submit even to an inspection of his premises, at his own expense, and forbidden to keep them or allow them to be kept in such condition as to create disease. He may, therefore, have been required, at his own expense, to make, from time to time, such disposition of obnoxious substances originating on the premises occupied by him as would be necessary in order to guard the public health."

Wherefore, I conclude that the Commissioners were vested with authority to enact said regulation; that the regulation in question is necessary and proper for the protection of the public health and comfort and is not in violation of any constitutional rights of the defendant, and [fol. 8] I accordingly hold that under the facts the defendant is guilty of a violation of Section 12 of the Regulations.

John P. McMahon, Trial Judge.

April 10, 1948.

IN THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

(For use only where penalty imposed is less than $50)

GERALDINE LITTLE, alias Mildren Parker, Applicant,
1315 10th Street, N. W., Washington, D. C.

v.

DISTRICT OF COLUMBIA, Respondent, Washington, D. C.

APPLICATION FOR ALLOWANCE OF APPEAL FROM THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA, CRIMINAL DIVISION

1. Applicant, being aggrieved by the judgment (order) (sentence) entered on the 10th day of April, 1948, in The Municipal Court for the District of Columbia, Criminal Di-

vision, in case No. .... (Municipal Court Docket), entitled District of Columbia v. Geraldine Little, alias Mildred Parker, hereby applies for the allowance of an appeal therefrom to The Municipal Court of Appeals for the District of Columbia.

2. The offense charged is set forth in the attached copy of information. (If Applicant was tried on more than one [fol. 9] charge, a separate application should be filed as to each offense for which allowance of appeal is sought.)

3. Trial was had—without a jury.

4. The Applicant was found guilty and the penalty imposed was $25.00 fine or 10 days in jail.

5. The grounds for this appeal are: (The grounds should be stated as simply and as specifically as possible)

The proof showed that 1015 10th Street, N. W., was the private residence of Geraldine Little and was occupied and used only as a private residence. On the afternoon in question one C. Abney dressed in a uniform of the D. C. Health Department appeared at said residence, accompanied by M. A. Dixon a police officer and demanded admission. A party who did not live there came out of the house but refused to admit the Health Officer. Defendant, Geraldine Little, shortly thereafter came across the street and approached her home, 1315 10th Street, N. W., when said C. Abney told her he was from the Health Department; that he was from the Health Department, that her place had been reported to be in an unsanitary condition and he wanted to inspect it. He had no search warrant or other warrant, neither had the policeman, Dixon, who was with him. No notice had been given the defendant prior to that time that the Health Officer would be there to inspect her home for any reason, or that her home had been reported to be in an unsanitary condition. Mrs. Little told the said C. Abney and M. A. Dixon that 1315 10th Street, N. W., was her private home; that she had some Constitutional rights to protect her home, and refused to unlock the door and permit entry. She and the other party who had refused them entry were thereupon arrested in front of the house "for interfering with a Health Officer." They were carried to a call box by the policeman and detained until a Police patrol wagon came when they were put into the patrol wagon and driven to No. 2 police precinct where they [fol. 10] were detained until they posted collateral in the sum of $25.00 each some time later. Mrs. Little was form-

ally charged the next day in a complaint with "interfering with a Health Officer" on the facts above stated.

The cause came on for trial by the Court without a jury. At the close of all the testimony defendant, through counsel, moved the Court to find the defendant not guilty because:

"1. The proof shows that the place the Health Officer was seeking to enter and inspect was a private dwelling house and there was no proof that there was an infectious or any other disease therein and that there was no condition therein which could in any way effect the public health."

"2. That an invasion and entry of said private dwelling house by the Health Inspector, over the objection of defendant, the occupant, was an illegal act and an invasion of defendant's Constitutional rights."

"3. That the entry of said Health Officer, over the objection of defendant, was an unlawful act and an invasion of her rights of privacy."

"4. That any Ordinance of the District of Columbia which sought to give the Health Inspector a right to enter the private dwelling house of defendant, without a warrant, writ, or other legal authority, and without notice to defendant was beyond the authority of the Commissioner of the District of Columbia to enact, and beyond the power granted the District by Congress."

"5. That any attempt by Congress to give the District of Columbia power to enact an Ordinance to give the Health Inspector such authority was un-Constitutional and an invasion of defendant's Constitutional rights."

At the close of the oral argument the Court asked counsel, pro and con, to file briefs. This was done and defendant reiterated in writing and argued in said brief the points set out above. The Act of Congress on which the Ordinance was founded, (52 Cong. Sec. 1, Res. 4-7, and Act of Congress referred to therein—Jan. 26, 1887, Ch. 45, U. S. at Large, [fol. 11] Vol. 24, p. 565 were set out in full—Feb. 26, 1892) were set out in full to show no authority, as to private dwellings for entry under Ordinance of April 25, 1897, amended to July 28, 1922, and for no authority of the Health Department to enact regulations entitling Inspectors to enter private dwellings without warrant or other court authority.

On April 10, 1948, the Court, by written Memorandum filed, disallowed defendant's motion, and found her guilty. In this the Court Erred for the reasons above stated.

Jeff Busby, Applicant, or Attorney for Applicant, 900 F Street, N. W. Address.

Subscribed and sworn to before me by —— this 14 day of April, 1948. Wm. A. Norgren, Clerk.

IN THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Criminal No. 38580

[Title omitted]

SUPPLEMENTAL STATEMENT OF PROCEEDINGS AND EVIDENCE

The defendant came on for trial before me in the Criminal Division of the Municipal Court for the District of [fol. 12] Columbia on a charge that she did hinder, obstruct and interfere with an Inspector of the Health Department in the performance of his duties at premises 1315 10th Street, N. W.

The following evidence was produced on behalf of the District of Columbia.

C. Abney testified that he was an Inspector of the Health Department of the District of Columbia; that one Gilbert S. Cobb, an occupant in said premises, 1315 10th Street, N. W., personally appeared at the Health Department and made a complaint that there was an accumulation of loose and uncovered garbage and trash in the halls of said premises and that certain of the persons residing therein had failed to avail themselves of the toilet facilities; that upon the filing of said complaint, witness was ordered by the Health Officer to make an inspection of said premises; that in September, 1947 witness, dressed in the uniform of a Health Department Inspector, in company with Officer M. A. Dixon, a uniformed member of the Metropolitan Police Department, went to said premises where they found one William Allen about to enter said premises; that witness identified himself as an Inspector of the Health Department, stated the nature of his business, and asked permission of Allen to enter said premises for the purpose of making an inspection; that Allen refused to permit witness to enter, stating that the owner of the premises was not

at home; that during the discussion between witness and Allen, a woman, who at that time was unknown to witness or Officer Dixon, was standing across the street from the premises, and she called to Allen not to permit the Inspector to enter the premises; later, this woman came across the street and up to the porch of said premises, and continued to tell Allen not to permit the Inspector to enter said premises for the purpose of making an inspection; that Dixon, the Police Officer, asked the woman if she was the owner of the premises and upon her denying ownership of the premises, Officer Dixon instructed her to go about [fol. 13] her business; Allen was then informed that he was interfering with a Health Officer in the performance of his duties and was placed under arrest; that Allen was taken by Officer Dixon to the nearest Police Callbox; the unidentified woman followed along, protesting the right of the Health Inspector to enter the premises and finally identified herself as the owner of the premises and demanded that she also be arrested for interfering with a Health Officer in the performance of his duties; that the defendant seized Inspector Abney's arm and attempted to grab the papers he was holding in his hand; she was then arrested.

Officer M. A. Dixon, called on behalf of the District of Columbia, testified substantially the same as Inspector Abney.

On cross-examination Inspector Abney and Officer Dixon both testified they had no warrant or other process of court.

The District of Columbia thereupon announced its case as closed.

The defendant, as a witness in her own behalf, testified in substance as follows: That she came from across the street with a bundle of groceries in her hand and saw Inspector Abney and Officer Dixon in front of her door talking to William Allen; that she was asked if she lived at these premises and she replied that it was her private residence; that witnesses Abney and Dixon then demanded that she permit Inspector Abney to make an inspection of the premises; that she denied permission to them to enter said premises on the ground that her constitutional rights did not require her to submit to an inspection; that thereupon, after some discussion, the defendant and Allen were placed under arrest for interfering with a Health Inspector in the performance of his duties and taken to the nearest Patrol Box.

The defendant's 15 year old daughter, called as a witness on behalf of the defendant, testified in substance as follows: That she was in the upstairs part of the house, 1315 10th [fol. 14] Street, N. W., and she overheard a discussion taking place and was able from the sound to determine that it concerned "constitutional rights."

The defendant thereupon announced her case as closed.

The court thereupon adjudged the defendant guilty and imposed a fine of $25.00 and in default of the payment of the fine that she serve a term of 10 days.

John P. McMahon, Trial Judge.

November 30, 1948.

Jeff Busby, Esquire, 900 F Street, N. W., Atty. for Appellant. Edward A. Beard, Esquire, Asst. Corp. Counsel, Atty. for Appellee.

IN THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 697

GERALDINE LITTLE, alias Mildred Parker, Appellant,

v.

DISTRICT OF COLUMBIA, Appellee

Appeal from the Municipal Court for the District of Columbia, Criminal Division

(Reargued December 7, 1948. Decided December 22, 1948)

Jeff Busby for appellant.

Edward A. Beard, Assistant Corporation Counsel, with whom Vernon E. West, Corporation Counsel, and Chester H. Gray, Principal Assistant Corporation Counsel, were on the brief, for appellee.

[fol. 15] Before Cayton, Chief Judge, and Hood and Clagett, Associate Judges

OPINION

CLAGETT, Associate Judge:

Appellant, Geraldine Little, alias Mildred Parker, was charged with and convicted of hindering, obstructing and interfering with a health officer in the performance of his

duty in carrying out the provisions of local health regulations.

The account of the arrest given by the government witnesses was as follows: One of the occupants of a residential property belonging to appellant appeared at the Health Department and made a complaint that there was an accumulation of loose and uncovered garbage and trash in the halls of the house and that certain of the residents failed to avail themselves of the toilet facilities. Thereafter under orders of his superior a uniformed officer of the D. C. Public Health Department accompanied by a uniformed member of the Metropolitan Police went to the residence for the purpose of inspection.

The officers were met at the door by one Allen, who was about to enter the premises. The inspector identified himself, told of his mission and asked permission to inspect the house. Allen refused premission on the ground that the owner was not at home. Appellant, who was then unknown to the officers, was across the street and called to Allen not to permit the officers to enter. Appellant then crossed the street, came upon the porch of the premises, and, after she knew the object of the call, again told Allen not to permit the officers to enter. Appellant at first denied her ownership of the premises and was told to go about her business. Allen was arrested for interfering with a health officer, and taken to a nearby police call box followed by appellant protesting the right of entry. She finally identified herself as the owner of the house and demanded that she be arrested also. She seized the health officer's arm and attempted to grab some papers that he was holding. She was then arrested.

[fol. 16] Appellant's own account was substantially the same, except that she claimed she was arrested after denying the officers permission to enter the premises on the ground that her constitutional rights did not require her to submit to the inspection.

Several errors are alleged, but in substance they amount to the assertion that the actions of the health officer were an at-empt to carry out an unlawful search of a private dwelling in contravention of the Fourth Amendment to the United States Constitution, and hence that appellant could not be legally arrested for resisting.

The government insists that the case may be resolved without reference to the constitutional propriety of the at-

tempted entry. It is said that appellant's arrest was predicated upon her actions on a public street in interfering with the arrest of Allen. However, the information upon which appellant was convicted charged her with interfering with a health officer, not a police officer. Making arrests is not a part of the duties of a health officer. Furthermore, the case was not tried upon this theory. The trial judge's memorandum opinion deals only with the constitutional issue, and we believe that our decision also must turn upon it.

The police regulation which appellant was convicted of violating was promulgated by the District of Columbia commissioners April 22, 1897, pursuant to a joint resolution of Congress enacted February 26, 1892 (52 Cong., Sess. 1, Res. 1-7, 1892, entitled "Joint Resolutions to Regulate Licenses to Proprietors of Theaters in the City of Washington, District of Columbia, and for Other Purposes.") This joint resolution authorized the commissioners to make and enforce all such reasonable and usual police regulations as they might deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the District of Columbia. The regulations adopted pursuant to this act provide in part, as follows:

[fol. 17] "2. That it shall be the duty of every person occupying any premises, or any part of any premises, in the District of Columbia, or if such premises be not occupied, of the owner thereof, to keep such premises or part, * * * clean and wholesome; if, upon inspection by the Health Officer * * * it be ascertained that any such premises, or any part thereof, or any building, * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, * * * shall be notified thereof and required to place the same in a clean and wholesome condition; and in case any person shall fail or neglect to place such premises or part in such condition within the time allowed by said notice he shall be liable to the penalties hereinafter provided.

"10. That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition * * *.

"12. That any person violating, or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction * * * be punished by a fine of not less than $5 nor more than $45."[1]

While *all buildings* are included within the scope of the regulation, and thus private dwellings are so included, it is of some significance that special mention is made of stores, workshops, tenements and lodging houses.

Generally health laws and ordinances are accorded liberal construction because their exercise is largely discretionary. However, when they appear to violate a constitutional right, the courts must carefully weigh the value of the end accomplished against the restriction suffered.[2] It is within the police power of municipal corporations to control and [fol. 18] regulate the manner of collection and disposition of garbage, refuse or filth,[3] but regulations of this kind must not unduly infringe upon individual rights.[4]

Generally public authorities may employ all necessary means to protect the public health and in so doing may provide for the inspection of premises as a health measure.[5] However, it is to be noted that the overwhelming majority of the cases sustaining this inspection power concern public or quasi-public places. It is clearly within the power of municipal authorities to provide for the inspection of hotels, places where food is served or stored and other public places.[6] The reason for this is patent: there is a prospect of immediate danger to the health of large segments of the public. But where a single private dwelling is concerned the "present danger" is a much more elusive thing. One

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[1] Amendment of July 28, 1922.

[2] 3 McQuillin, Municipal Corporation (2nd ed.) § 954.

[3] *Gardner* v. *Michigan*, 199 U. S. 325. See *Dupont* v. *District of Columbia*, 20 App. D. C. 477.

[4] *Consumers Co.* v. *City of Chicago*, 313 Ill. 408, 145 N. E. 114.

[5] 25 Am. Jur., Health § 28.

[6] *Hubbell* v. *Higgins*, 148 Iowa 36, 126 N. W. 914; *Keiper* v. *City of Louisville*, 152 Ky. 691, 154 S. W. 18.

authority distinguishes the power of inspection as it concerns private premises, pointing out that the constitutional aspect of inspection differs when it is extended to the interior of private houses, and that such inspection should require an affidavit, probable cause and judicial warrant.[7]

Unless the condition which is the object of inspection amounts to an immediate danger or a dangerous nuisance per se, it would appear that municipal authorities would be acting beyond their powers in taking any summary action.[8] Since sanitary or quarantine regulations and the like are promulgated by the community for its self-defense, they should not be carried beyond absolute necessity.[9] Most law-abiding householders gladly permit such inspections, especially where the officers are in uniform. But since the regulation itself provides for abatement of such a nuisance [fol. 19] only after notice and hearing, it would seem to follow that health officers can not inspect, when challenged, without the usual and ordinary preliminary steps for search. Nothing herein indicates such urgency or immediate danger as to approve the total waiver of these protections. An existing or threatened epidemic might establish a different case. One treatise on public health states that it is the duty of a health officer to make inspections. However, this authority goes on to say that if entry is refused the officers should obtain a warrant and effect entry by such legitimate means.[10] The same situation is apparent here. The regulation does not require an unconstitutional method of search. It may be carried out within the framework of the Constitution by obtaining a warrant. Hence we do not wish to be understood as saying that the regulation is unreasonable on its face. We express an opinion only as to its application under the present facts.

We believe that the conditions of this case did not warrant the action taken by the health officer. Neither summary abatement nor entry over objection can be justified

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[7] Freund, Police Power § 47. See *McDonald* v. *United States*, — U. S. —, *No. 36, decided Dec. 13, 1948.*

[8] See *North American Cold Storage Co.* v. *Chicago*, 211 U. S. 306; *Lawton* v. *Steele*, 152 U. S. 133.

[9] *Hannibal and St. Joseph R. R. Co.* v. *Husen*, 95 U. S. 465.

[10] Public Health and Safety, Parker & Worthington (1892) §§ 43, 144, 145.

under the circumstances. Therefore it must follow that the conviction can not be sustained.

Reversed.

[fols. 20-28] IN THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, OCTOBER TERM, 1948

No. 697

GERALDINE LITTLE, alias Mildred Parker, Appellant,

v.

DISTRICT OF COLUMBIA, Appellee

JUDGMENT

Appeal from the Municipal Court for the District of Columbia, Criminal Division. This cause came on to be heard on the transcript of the record from the Municipal Court for the District of Columbia and was re-argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Municipal Court in this cause, be and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said Municipal Court for further proceedings in accordance with the opinion of this Court.

Brice Clagett, Associate Judge.

December 22, 1948.

[fol. 29] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1949

Before Honorable E. Barrett Prettyman and James M. Proctor, Circuit Judges, and Alexander Holtzoff, District Judge, Sitting by Designation

No. 10,092

DISTRICT OF COLUMBIA, Appellant,

v.

GERALDINE LITTLE, Alias Mildred Parker, Appellee

MINUTE ENTRY—June 10, 1949

Argument commenced by Mr. Chester H. Gray, attorney for appellant, and concluded by Mr. Jeff Busby, attorney for appellee.

[fol. 30] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10092

DISTRICT OF COLUMBIA, Appellant,

v.

GERALDINE LITTLE, Alias Mildred Parker, Appellee

Appeal from the Municipal Court of Appeals for the District of Columbia

Argued June 10, 1949. Decided August 1, 1949

Mr. Chester H. Gray, Principal Assistant Corporation Counsel, D. C., with whom Mr. Vernon E. West, Corporation Counsel, D. C., and Mr. Edward A. Beard, Assistant Corporation Counsel, D. C., were on the brief, for appellant.

Mr. Jeff Busby, with whom Mr. Jeff Busby, Jr., was on the brief, for appellee.

Before Prettyman and Proctor, JJ., and Alexander Holtzoff, District Judge, Sitting by Designation

OPINION

PRETTYMAN, J.:

Appellee Little was convicted in the Municipal Court for the District of Columbia upon an information which

charged that on certain premises on a certain day she hindered, obstructed and interfered with an inspector of the Health Department in the performance of his duty. She appealed, and the Municipal Court of Appeals, in a unanimous opinion written by Associate Judge Clagett, reversed.[1] Because of the importance of the question to the enforcement of the health laws, we granted an appeal.

Appellee refused to unlock the front door of her home at the command of a Health Department inspector who was [fol. 31] without a warrant. The question is whether she was within her constitutional rights in doing so, or whether she thereby illegally hindered him in the performance of his duty.

The inspector testified that he was ordered by the Health Officer to make an inspection of the premises after a complaint had been made "that there was an accumulation of loose and uncovered garbage and trash in the halls of said premises and that certain of the persons residing therein had failed to avail themselves of the toilet facilities".[2] It is not disputed that the premises is a private residence, the home of the appellee; that the inspector had no warrant either of arrest or search; that the appellee refused to unlock the front door, and that she was thereupon arrested.

The District of Columbia says that the Health Officer is fully empowered by valid statutes to enforce the public health laws; that the Commissioners are likewise duly empowered to make all regulations necessary to protect the public health; that the regulations require owners and occupants of premises to maintain them in a clean and wholesome condition,[3] and that the same regulations authorize

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[1] *Little v. District of Columbia*, 62 A. 2d 874 (1948).

[2] The quoted description of the complaint is from the findings of the trial court.

[3] This regulation, in pertinent part, as found by the trial court, is:

"(2) It shall be the duty of every person occupying any premises, or any part of any premises in the District of Columbia, or, if such premises be not occupied, of the owner thereof, to keep such premises or part, * * *, clean and wholesome. If upon inspection by the Health Officer or an inspector of the Health Department, it be determined that any such part thereof, or any building, yard, * * * is not in

inspections and denominate as a misdemeanor interference with an inspection.

In respect of the Fourth Amendment, the District says that the attempted inspection was premised upon a complaint, which, if true, constituted probable cause to believe that a violation of law existed in the dwelling, and that the attempt was at a reasonable time of day by a uniformed officer who stated the purpose of his visit. It says that the view "expressed by the Municipal Court of Appeals is not consonant with the scope of the police power as indicated by the decisions of Courts controlling in this jurisdiction" and, further, that "it has been the view of the Congress, as shown by its statutory enactments limiting the right of inspection without warrant in certain specified activities under the police power, that it may unqualifiedly extend the [fol. 32] right of inspection without warrant in such circumstances as it may deem necessary, so long as the police power is reasonably exercised." It also says that

"Practical application of this holding [of the Municipal Court of Appeals] to the problems of enforcement of health laws in a large city would result in chaos. The whole purpose of the use of the police power by the health authorities is to prevent the creation of present and immediate dangers, to correct deficiencies before they become nuisances per se and before the public is endangered. While every authority recognizes the necessity for inspection, the effect of the Municipal Court of Appeals' opinion is to prevent it; for, if the danger is immediate and the nuisance apparent, the sovereign may protect the public by civil proceedings to

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such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, as hereinbefore specified, shall be notified and required to place same in a clean and wholesome condition; and in case any person shall fail or neglect to place said premises or part in such condition within the time allowed by said notice, he shall be liable to the penalties hereinafter provided.

* * * * * * *

"(10) That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition, and make a record of such examination; * * *."

abate it and by criminal prosecution of the guilty party—the necessity for inspection no longer exists."

The position of the District is summarized by it as follows:

"In the view of appellant a more salutary rationale insuring effective protection of the health and safety of the public, and at the same time cognizant of the personal rights of the individual under the Fourth Amendment, would be a holding that an inspection of a private dwelling in aid of the police power as it relates to matters of health is valid even though without warrant, provided there is probable cause to believe that there exists within the dwelling a violation of law or regulation designed to protect the health, safety or welfare of the public and provided the inspection is attempted under circumstances and conditions of fact which are not unreasonable."

As a separate consideration, the District also presents an argument based upon some conflict in the testimony as to whether appellee was arrested for hindering the health officer by refusing to unlock the door on the premises or was arrested for interfering with a police officer in the arrest of another person at a police call box some distance down the street. That argument has no bearing upon the case, because the information upon which appellee was convicted charged her with interfering with the health inspector, not the policeman, upon the premises, not upon the public street, and with hindering the performance of duty by the health inspector, not with interfering with a police officer in the performance of an arrest.

We must delimit the question before us. Many of the problems discussed in the District's brief are not in the case. The simple question is: Can a health officer of the District of Columbia inspect a private home without a warrant if the owner or occupant objects?

The Fourth Amendment to the Constitution applies.[4] The Supreme Court has several times in recent cases ex- [fol. 33] haustively and emphatically discussed the invasion

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[4] *Neild* v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246 (1940); *National Mutual Ins. Co. of D. C.* v. *Tidewater Transfer Co., Inc.*, 17 U. S. L. Week 4536 (U. S. June 20, 1949).

of private dwellings by government officers.[5] If there ever was any doubt upon the matter, it has surely now been laid to rest. The several opinions in those cases contain complete historical studies, relating to both federal and state governments, and many unequivocal declarations, quotable and unmistakable. We need not attempt to reproduce them here.

Democratic government has distinguishing features. One of them is freedom of speech for the individual; another is freedom of religion. Another is the right of privacy of a home from intrusion by government officials. These characteristics are not mere hallmarks. They are the beams and pillars about which the structure was built and upon which it depends. If private homes are opened to the intrusion of government enforcement officials, at the wish of those officials, without the intervening mind and hand of a magistrate, one prop of the structure of our system is gone and an outstanding characteristic of another form of government will have been substituted.

When the Constitution prohibits unreasonable searches, it of course, by implication, permits reasonable searches. But reasonableness without a warrant is adjudged solely by the extremity of the circumstances of the moment and not by any general characteristic of the officer or his mission. If an officer is pursuing a felon who runs into a house and hides, the officer may follow and arrest him. But this is because under the exigencies of circumstance the law of pursuit supersedes the rule as to search. There is no doctrine that search for garbage is reasonable while search for arms, stolen goods or gambling equipment is not. Moreover, except for the most urgent of necessities, the question of reasonableness is for a magistrate and not for the enforcement officer.[6]

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[5] *Agnello* v. *United States*, 269 U. S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925); *Harris* v. *United States*, 331 U. S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947); *Davis* v. *United States*, 328 U. S. 582, 90 L. Ed. 1453, 66 S. Ct. 1256 (1946); *Johnson* v. *United States*, 333 U. S. 10, 92 L. Ed. —, 68 S. Ct. 367 (1948); *McDonald* v. *United States*, 335 U. S. 451, 93 L. Ed. —, 69 S. Ct. 191 (1948); *Wolf* v. *Colorado*, 17 U. S. L. Week 4639 (June 27, 1949).

[6] *Johnson* v. *United States*, 333 U. S. 10, 13, 14, 92 L. Ed. —, 68 S. Ct. 367 (1948).

It is said to us that the regulations sought to be enforced by this search only incidentally involved criminal charges, that their purpose is to protect the public health. It is argued that the Fourth Amendment provision regarding searches is premised upon and limited by the Fifth Amendment provision regarding self-incrimination. It is said to us that therefore there is no prohibition against searches of private homes by government officers, unless they are searching for evidence of crime; that if they are searching for evidence of crime, they must get a search warrant, but that if they are searching for something else or are just [fol. 34] searching, they need not get a search warrant; for searchers of the latter sort, we are told, home owners must open their front doors upon demand of an officer without a warrant. The argument is wholly without merit, preposterous in fact. The basic premise of the prohibition against searches was not protection against self-incrimination; it was the common-law right of a man to privacy in his home, a right which is one of the indispensable ultimate essentials of our concept of civilization. It was firmly established in the common law as one of the bright features of the Anglo-Saxon contributions to human progress. It was not related to crime or to suspicion of crime. It belonged to all men, not merely to criminals, real or suspected. So much is clear from any examination of history, whether slight or exhaustive. The argument made to us has not the slightest basis in history. It has no greater justification in reason. To say that a man suspected of crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity.

The argument involves a basic error in reasoning in respect to the Constitution's Bill of Rights. The Fourth Amendment did not confer a right upon the people. It was a precautionary statement of a lack of federal governmental power, coupled with a rigidly restricted permission to invade the existing right. The right guaranteed was a right already belonging to the people. The reason for the search warrant clause was that public interest required that personal privacy be invadable for the detection of crime, and the Amendment provided the sole and only permissible process by which the right of privacy could be invaded. To view the Amendment as a limitation upon an otherwise unlimited

right of search is to invert completely the true posture of rights and the limitations thereon.

Much of the argument of the District is devoted to establishing the public importance of the health laws. Assertions are also made of the beneficence and forbearance of health officers. We may assume both propositions. But the constitutional guarantee is not restricted to unimportant statutes and regulations or to malevolent and arrogant agents. Even for the most important laws and even for the wisest and most benign officials, a search warrant must be had.

We emphasize that no matter who the officer is or what his mission, a government official cannot invade a private home, unless (1) a magistrate has authorized him to do so or (2) an immediate major crisis in the performance of duty affords neither time nor opportunity to apply to a magistrate. This right of privacy is not conditioned upon the objective, the prerogative or the stature of the intruding officer. His uniform, badge, rank, and the bureau from [fol. 35] which he operates are immaterial. It is immaterial whether he is motivated by the highest public purpose or by the lowest personal spite.

To be certain that we have stated the rule no broader than existing law, one has only to read the cases cited *supra* in footnote 5; indeed, the opinions in *McDonald* v. *United States* alone are sufficient. *Morton* v. *United States*[7] and Section 3053 of Title 18 (new) of the United States Code are cited to support the proposition that an officer may enter any building if he has reasonable ground to believe that a person therein has committed a felony. Neither citation supports the proposition stated. The *Morton* case concerned the use of evidence seized in a search which was incidental to a lawful arrest for first degree murder. This court, in a careful opinion by Judge Justin Miller, recited the facts which demonstrated that the arrest was made and was lawful and that the officers were admitted without objection to the accused's quarters. Section 3053 of Title 18 of the United States Code makes neither mention of nor reference to searches. The historical fact is that the invasion of homes upon a suspicion on the part of a police officer alone, either that a felon was there or that a felony was being committed there, was one of the potent factors in the adoption of the

[7] 79 U. S. App. D. C. 329, 147 F. 2d 28 (1945).

prohibitory rule of the common law and in its recitation in the Fourth Amendment. That an officer merely suspects that a felon is in a house is a precise example of a situation in which a warrant is required, not of one in which a warrant need not be had.

The District lays great stress upon the fact that there was a complaint, succinct and definite. But, so far as we know, the existence of a complaint has never been held to be a basis for dispensing with a search warrant. Quite the contrary, the fact of a complaint shows (1) that there is an identifiable informant who could be taken before a magistrate; (2) that the enforcement officers have no direct or personal knowledge of the alleged offense; and (3) that in all reasonable probability a search warrant would be procurable. These are reasons for getting a warrant, not for failing to get one.

There is nothing about an accumulation of garbage or other matter deleterious to health which makes it difficult to obtain a warrant to search for it. It is as noticeable and as apt to complaint as are gaming equipment or stolen goods. Health officers may chafe at the inconvenience, but so do police officers.

Distinction between "inspection" and "search" of a home has no basis in semantics, in constitutional history, or in reason. "Inspect" means to look at, and "search" means [fol. 36] to look for. To say that the people, in requiring adoption of the Fourth Amendment, meant to restrict invasion of their homes if government officials were looking for something, but not to restrict it if the officials were merely looking, is to ascribe to the electorate of that day and to the several legislatures and the Congress a degree of irrationality not otherwise observable in their dealings with potential tyranny.

We need not go beyond the record in this case for an example of the extremity to which the doctrine of the appellant District would take us. One of the two complaints made by the unidentified informant was that some of the occupants of the house "failed to avail themselves of the toilet facilities". Reducing appellant's doctrine to practicalities, the result would be that if the owner of a house be reliably charged with concealing a cache of arms and munitions for purposes of revolution, police officers could not search without either permission or warrant, but if the information be that an occupant fails to avail himself of the toilet facilities,

government officials could enter and examine the house over protest and without a warrant. It may be that the boundary of the curtilage is no longer the outpost of man's domestic independence. It may be that a transom is debatable access. But even if the front door of the house is no longer protected by the Constitution, surely it had been thought until now that the bathroom door is.

The scope of appellant's doctrine is vivified by reference to the pertinent regulations. The occupant of any "part" of any "premises" is required to keep that part "clean and wholesome". To satisfy municipal officers that this mandate is met, the privacy of a home would be subjected to intrusion without restriction or limitation. Obviously, any such rule of law would wholly destroy that privacy. Under it, a home must be "clean and wholesome" in the judgment of municipal officials. By what standard and at what time of day is this perfection to be tested? And under what combination of domestic circumstances? Is the unassisted, overworked, overwrought mother of small uninhibited children to have less privacy to work out her family difficulties than the unencumbered bachelor in his serviced apartment? Is the evening radio hour to be at the whim of a zealous officer making bacteria counts on dinner dishes in the kitchen sink? Is the informality of a lone housewife doing the morning chores to be embarrassed by the unpreventable company of a benign, but nevertheless strange, searcher for the unclean and the unwholesome? These are extreme examples, perhaps, but they are no sillier than the precise words of the complaint in the present case, and we are dealing with doctrines and not with the presumable taste and sense of individual officials. Maybe none of these examples [fol. 37] would ever occur. But the question before us is not whether they would happen but whether they legally could.

In support of appellant's position, it is said that the purpose of the Fourth Amendment was to provide a remedy against general warrants, that general warrants had been sought only in criminal cases, and that the remedy should be construed as no broader than the evil. The reasoning gets a superficial plausibility from its curious substitution of incident for basic principle. It is true that the incident which gave rise to the furor in England and to the fears in this country was the invention of general warrants designed to accomplish an invasion of homes. And the adopters of

the Amendment certainly intended to forestall any such in this country. But even if the second clause of the Amendment had been a specific prohibition against general warrants (which it is not), to say that the specific prohibition of one threatened violation of a basic right thereby validates every other violation of that right is both illogical and unrealistic. The present Chief Justice of the United States, writing for this court in *Nueslein* v. *District of Columbia*[8] when he was an Associate Justice here, disposed of the argument here made. No other discussion of that phase of the contention is necessary.

We are told by the District that enactments by the Congress show an intention to permit invasion of homes without warrants. The Supreme Court said in *Agnello* v. *United States*,[9] "Congress has never passed an act purporting to authorize the search of a house without a warrant." And we find in Section 2236 of Title 18 of the United States Code, reenacted just a year ago, a crisp and emphatic indication of the attitude of the Congress upon the matter. That section provides:

"Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than $1,000; and, for a subsequent offense, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

That statute does not apply to District of Columbia officials, but it clearly reflects the attitude of the Congress in respect to the matter. It seems unnecessary to add what is obvious to us, that any act of the Congress purporting to permit the invasion of homes by police officers without warrants, ex- [fol. 38] cept under the established exception of unavoidable crisis, would not only be politically lethal to its proponents but would be wholly void.

It is said in support of appellant's position that Congress has never enacted a statute providing for search warrants

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[8] 73 App. D. C. 85, 115 F. 2d 690 (1940).

[9] 269 U. S. 20, 32, 70 L. Ed. 145, 46 S. Ct. 4 (1925).

except for the enforcement of criminal laws. It is argued from that premise that Congress views the whole Fourth Amendment as limited to criminal cases. Precisely the opposite conclusion is obvious to our minds. The absence of statutory provisions for search warrants except in criminal cases demonstrates conclusively that Congress means that the right of privacy shall not be invaded except in criminal cases. Search warrants are a means of invading a privacy which otherwise is not invadable at all.

Support for appellant's position is offered in sentences taken from opinions in cases which concerned both a Fifth Amendment question of self-incrimination and a Fourth Amendment question of search. Evidence taken in an allegedly illegal search was used against the owner or possessor in a criminal case. Obviously, in such cases observations upon the interrelationship of the two Amendments is natural and proper. But in none of them is there the slightest intimation that the right to privacy protected by the Fourth Amendment is limited to persons or things involved in suspected crime. It is unnecessary to describe each case mentioned in this connection. They simply do not support the proposition advanced to us.

We have read all the other cases cited. None relates to the search of private dwellings. We need not discuss them at length. Some relate to seizures of goods in interstate commerce or pursuant to writs, some to production of goods or papers pursuant to governmental order, some to the validity of warrants or writs. *Hubbell* v. *Higgins*[10] dealt with the inspection of a hotel. It well illustrates the fallacy of the argument for which it is cited. Hotels are subject to government license, but no one has ever suggested that in this country a man could be required to have a license to have a home.

We hold that health officials without a warrant cannot invade a private home to inspect it to see that it is clean and wholesome, or to search for garbage upon a complaint that garbage is there, or to see whether the occupants have failed to avail themselves of the toilet facilities therein.

We do not reach the question whether a municipal regulation requiring private homes to be clean and wholesome, [fol. 39] and denominating as a misdemeanor a violation of the regulation, is valid. Of course, regulations, like

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[10] 148 Iowa 36, 126 N. W. 914 (1919).

laws, which protect the public health, prevent nuisances and the like, applicable by terms and practice to conditions impinging upon the public interest, are valid and enforceable. And so, too, are emergency measures necessary in the case of persons with communicable diseases who are at large and refuse to cooperate with restrictive measures;[11] or in the case of other sudden emergencies involving the public. But when such regulations or laws purport to give officers authority to enter private homes, against the occupants' protests, and without a warrant, when no compelling emergency involving public health is involved, a serious question of constitutional validity is raised. Health laws can be enforced in the same manner as are other laws. If an acute emergency occurs precluding reference to a court or magistrate, public officials must take such steps as are necessary to protect the public. But, absent such emergency, health laws are enforced by the police power and are subject to the same constitutional limitations as are other police powers. It is wholly fallacious to say that any particular police power is immune from constitutional restrictions.

We come now to a more difficult phase of the situation presented to us by the District government. It says that the statutes which prescribe the procedure for obtaining search warrants in the District of Columbia are so drawn that they are not available for the enforcement of health laws and regulations. Those statutes enumerate the articles or things for which search warrants may be issued and do not refer to articles or conditions offending the health laws.[12] This procedural omission requires action by the Congress, if the Congress deems it advisable that private dwellings be inspected in the course of enforcement of the health laws. The omission cannot be used as a premise for the conclusion that such inspections can be

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[11] Sec. 2, Act of Aug. 8, 1946, 60 Stat. 919, D. C. Code §§ 6–119a to 6–119k (1940) (Supp. VI).

[12] 41 Stat. 726 (1920), as amended, 7 U. S. C. A. § 167, D. C. Code § 6–904 (1940) (relating to plant diseases); D. C. Code § 22-805 (1940) (relating to cruelty to animals); 31 Stat. 1337 (1901), as amended, D. C. Code § 23–301 (1940) (relating to stolen goods, counterfeiting, gambling equipment, etc.); 52 Stat. 792 (1938), D. C. Code § 33–414 (1940) (relating to narcotics).

made without warrant or that Congress intended that they should be. It is untenable to argue that because Congress has failed to provide procedure for obtaining a search warrant, searches otherwise unconstitutional can therefore be made. The situation may well require immediate representations by the District authorities to the Congress for procedural implementation of important public health measures. That is a legislative problem. The function of the courts in situations such as this is to prevent violation by executive officials of constitutional guarantees.

[fol. 40] We concur in the opinion and judgment of the Municipal Court of Appeals, and its judgment is, therefore *Affirmed.*

DISSENTING OPINION

HOLTZOFF, J., dissenting:

With genuine respect for the views of my associates, I sincerely regret that I find myself unable to concur in their conclusion. With considerable hesitancy, I feel impelled to record my dissenting views because the case is one of novel impression involving an important principle of Constitutional law and the decision may have wide implications and far-reaching consequences.

The question presented for determination is whether an Act of Congress, or a municipal ordinance or regulation promulgated pursuant to an Act of Congress, that authorizes health officers in the District of Columbia to enter dwellings without a search warrant for the purpose of inspection, is violative of the provisions of the Fourth Amendment to the Constitution of the United States prohibiting unreasonable searches and seizures.[1] The same problem may arise in respect to building inspectors, plumbing inspectors, and similar officers.

The personal rights of the individual as safeguarded by the Constitution of the United States form one of the bulwarks of American political institutions. The Bill of Rights

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[1]Amendment IV. *Searches and Seizures.* "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

is a vital part of the foundation on which our Republic rests. It distinguishes us from countries where the rights of the individual citizen are not protected from encroachment by the Government. Ceaseless vigilance is indispensable in order to preserve and maintain these rights. There can be no difference of opinion as to these basic principles.

The problem presented in this case, however, is the definition and the delimitation of one of the fundamental rights guaranteed by the Constitution. The meaning of the terms found in the Bill of Rights cannot be ascertained by a mere recourse to the dictionary. The personal rights to which the Constitution relates are basic concepts. Their significance is to be found in the historical background in which they were nurtured and from which they are derived. Every provision of the Constitution of the United States is compact and succinct, and can be properly and correctly understood and construed only in the light of the annals of the past. The Founding Fathers were thoroughly versed in history and political science and used the terminology found in the fundamental document in its traditional and historical sense.

[fol. 41] The Fourth Amendment does not ban all searches. It prohibits only those that are unreasonable. In determining what constitutes an "unreasonable search," we must delve into the antecedents of the Fourth Amendment and ascertain the meaning that was attached to that term by the framers of the Bill of Rights, among whom were some of the Founding Fathers.[2]

In *Carroll* v. *United States*, 267 U. S. 132, 149, Chief Justice Taft stated:

"The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve

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[2] In *Knowlton* v. *Moore*, 178 U. S. 41, 95, Mr. Justice White stated:

"The necessities which gave birth to the Constitution, the controversies which preceded its formation, and the conflicts of opinion which were settled by its adoption, may properly be taken into view for the purpose of tracing to its source any particular provision of the Constitution, in order thereby to be enabled to correctly interpret its meaning."

public interests as well as the interests and rights of individual citizens."[3]

"The rights of one to be secure in his person, papers, and effects, against unreasonable search and seizure, and not to be compelled in a criminal case to be a witness against himself are fundamental rights under the 4th and 5th Amendments to the Constitution 'which] affect the very essence of constitutional liberty and security'. * * * The true meaning of these rights are to be derived from what was deemed an unreasonable search and seizure at the time of the adoption of the Amendments to the Constitution, and are to be construed in a manner which will serve the public interest on the one hand, while protecting and safeguarding the personal rights of individuals on the other."

In *Boyd* v. *United States*, 116 U. S. 616, 624-625, a case that constitutes a landmark in the law of searches and seizures, Mr. Justice Bradley stated:

"In order to ascertain the nature of the proceedings intended by the Fourth Amendment to the Constitution under the terms 'unreasonable searches and seizures', it is only necessary to recall the contemporary or then recent history of the controversies on the subject, both in this country and in England."

The historical background of the Fourth Amendment is found in the struggle against the use of obnoxious general warrants and writs of assistance invoked by the English and Colonial governments for the purpose of making exploratory searches of homes with a view to discovery and seizure of incriminating books and papers, and contraband property. The celebrated opinion of Lord Camden, in 1765, in *Entick* v. *Carrington*, 19 Howell's State Trials 1029, emphatically condemned these arbitrary and oppressive measures. This decision is properly regarded as a notable milestone in the progress of human liberty. It must have been [fol. 42] well known to the Founding Fathers, many of

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[3] In *Harris* v. *United States*, 151 F. (2d) 837, 839 (C .C. A. 10th); affirmed, 331 U. S. 145, Murrah, J., expressed the same thought as follows:

whom were profound scholars, and it is reasonable to assume that their thinking was influenced by that case.[4]

Referring to the Fourth Amendment, Story in his *Commentaries on the Constitution of the United States*, Sec. 1902, says: "its introduction into the amendments was doubtless occasioned by the strong sensibility excited, both in England and America, upon the subject of general warrants almost upon the eve of the American revolution."

The Fourth Amendment was intended and is to be construed to apply only to criminal prosecutions and proceedings of a quasi-criminal nature for the enforcement of penalties. Its purpose is to limit and regulate searches conducted with a view to discovering and seizing books, papers, and objects to be used as evidence in a criminal proceeding or in an action for the enforcement of a penalty; and to protect any person against the use of evidence in a criminal or penal proceeding, if it has been procured from him by an unreasonable search and seizure. It does not affect the administration of law if criminal prosecutions or suits for penalties are not involved. It does not apply to inspections, if no seizure is intended.

Thus, in *Murray v. Hoboken Land and Improvement Co.*, 18 How. 272, 285, the Supreme Court held by a unanimous vote that the limitations of the Fourth Amendment did not apply to distress warrants for the collection of taxes. Mr.

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[4] That Lord Camden's strictures were directed against the use of general searches solely in connection with criminal prosecutions appears from the following statement in his opinion in *Entick* v. *Carrington*, 19 Howell's State Trials at 1073:

"It is very certain, that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it should seem, that search for evidence is disallowed upon the same principle. There too the innocent would be confounded with the guilty."

Entick v. *Carrington* is recognized in *Boyd* v. *United States*, 116 U. S. 616, 626, as the precursor of the Fourth Amendment.

Justice Curtis made the following observation on this point:

"But this article has no reference to civil proceedings for the recovery of debts, of which a search warrant is not made part."

Boyd v. United States, 116 U. S. 616, 634, involved the application of the Fourth Amendment to certain customs laws. In that case, the Court made the following observations:

"As, therefore, suits for penalties and forefeitures incurred by the commission of offenses against the law, are of this quasi-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; • • •"

The inference is clear that it was the view of the Supreme Court that the Fourth Amendment referred only to proceedings of a criminal or quasi-criminal nature.
[fol. 43] There are a number of district court decisions to the same effect. Thus, in the case of *In re Meador,* 16 Fed. Cases No. 9375, it was held that the limitations of the Fourth Amendment on the issuance of warrants do not apply in certain revenue cases. Similarly, in the case of *In re Strouse,* 23 Fed. Cases No. 13548, it was stated, "The Fourth Amendment • • • is applicable to criminal cases only".

Coming to more recent decisions, in *United States* v. *Eighteen Cases of Tuna Fish,* 5 F. (2d) 979, it was held that the Amendment does not apply to attachments under the Food and Drug Act. In *Camden County Beverage Co.* v. *Blair,* 46 F. (2d) 648, the authorities bearing on this point are exhaustively reviewed and the conclusion is reached that the Fourth Amendment does not apply to a proceeding to revoke a beverage permit, because it is civil in its nature and the Fourth Amendment is applicable only to proceedings of a criminal character.

In *United States* v. *62 Packages, Etc.,* 48 F. Supp. 878, 884, affirmed, 142 F. (2d) 107, it was stated, that "the Fourth Amendment to the United States Constitution does

not apply to a seizure process in civil actions". On the basis of this reasoning the conclusion was reached that proceedings under the Food, Drug and Cosmetic Act, were not subject to the limitations of the Fourth Amendment.

No reported case has been found that extends the scope of the Fourth Amendment to fields other than criminal law or the enforcement of penalties. All the decisions cited in the opinion of the court in support of its conclusion involved criminal prosecutions.

The conclusion that the prohibitions of the Fourth Amendment are limited to proceedings of a criminal or penal nature, is supported by the fact that apparently the Congress has never enacted any statutes providing for the issuance of search warants for any purpose other than the enforcement of the criminal law. The inference is clear that the legislative branch of the Government has continuously construed the Fourth Amendment in the manner here indicated. While this consideration is not conclusive, it is nevertheless entitled to great weight in interpreting the Constitution.[5] Specifically, there is no existing statute under which a health inspector, a plumbing inspector, or a building inspector may obtain a warrant authorizing him to enter a building for the purpose of a routine inspection. It has always been assumed that no search warrant is necessary. On the basis of the conclusion of the Court in this case, these officers may have to suspend their function of inspection until and unless the Congress passes an Act authorizing the issue of search warrants for this purpose. In the interim the District of Columbia may be confronted [fol. 44] with a serious situation. Moreover, even if an Act providing for such search warrants should be placed upon the statute books, how can an inspector make a showing of probable cause as a basis for the issuance of a warrant for the purpose of an ordinary, routine examination? Regular periodic inspections are conducted for the purpose of making certain that laws relating to sanitation and safety are being observed. Such examinations are not confined to situations in which there is a suspicion that the law is being violated. It is necessary that periodic inspections be regularly made for the purpose of securing observance

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[5] *Prigg* v. *Pennsylvania*, 16 Pets. 538, 621; *The Laura*, 114 U. S. 411; *Springer* v. *United States*, 102 U. S. 586, 599; *Field* v. *Clark*, 143 U. S. 649, 691.

of the laws and regulations relating to the safety and health of the community. If a search warrant were necessary for such recurring inspections, the requirement would amount to turning over the supervision of administration from the executive to the judicial branch of the Government, which, as the Supreme Court has observed in the past, would be a source of mischief and is contrary to the philosophy of our form of Government. The Constitution contemplates a tripartite division of Government into three coordinate branches. It was not intended that the judicial branch should have supervisory control over the executive.

Quarantine measures are enforced in large part by inspections. Their validity has been invariably accepted as inherent in the police power of the States and in the Federal power to regulate interstate commerce. For example, in recent years the Federal Government has had occasion to establish quarantines against certain insects. One of the means of enforcement has been to stop every vehicle crossing the quarantine line and examine its interior in order to ascertain whether it carried any plants that might in turn bear some of the insects. The inspection was purely exploratory and preventive, since it could not be said as to any particular vehicle there was reasonable cause to believe that it was transporting any plants. Nevertheless, although the right to *search* a vehicle arises only if there is reasonable ground to believe that it is carrying contraband,[6] such inspections have never been held repugnant to the Fourth Amendment. In fact, as a practical matter, regular and continuous inspections are indispensible in administering a quarantine.

Warrants issued by the courts are of two kinds: warrants of arrest and search warrants. The latter constitute authority to look for specified chattels and to seize them if found. There is no judicial document known to the law that would confer authority merely to inspect premises for the purpose of ascertaining whether certain laws, such as those relating to public health and public safety, are being observed. Such scrutiny has always been conducted by prop- [fol. 45] erly authorized officers without the requirement of judicial sanction. In effect, the opinion of the court proposes to create a new type of process, unknown to the common law or to any statute, and to confer power on the judi-

[6] *Carroll* v. *United States*, 267 U. S. 132.

ciary, that it has never possessed, to supervise the performance of routine administrative duties.

It is urged that inspections such as that in the instant case are an infringement of the sanctity of the home guaranteed by the Fourth Amendment. There is no doubt that the sanctity of the home is one of the fundamental private rights protected by the Constitution and must be safeguarded by the courts. The personal rights accorded to the individual by the first Ten Amendments are not, however, absolute or unqualified. For example, the right of freedom of speech is limited by the prohibition against publication of obscene material, against incitement to crime, and against the creation of public disorder. Mr. Justice Holmes, in his inimitable manner, observed that in the exercise of the right of freedom of speech, no one may rise in a crowded theater and yell "Fire!"[7] Similarly, the right of freedom of religion does not permit, in the name of worship, acts that are regarded as illegal, immoral or offensive.[8] In the same way, the sanctity of the home is not absolute. For example, it is not disputed that representatives of the local government may enter a home if one of its inhabitants is afflicted with a serious contagious disease that constitutes a menace to the community. Representatives of the Fire Department require no search warrant to enter a house in order to extinguish a blaze, even if the owner objects to their presence. In many instances, it is proper for public authorities to enter a building to suppress a nuisance, such as a noisy gathering disturbing the peace of the neighborhood. A law enforcement officer may enter a house without a warrant in order to arrest a person who he has reasonable grounds to believe has committed a felony.[9] The law has al-

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[7] *Schenck* v. *United States*, 249 U. S. 47, 52. See also *Debs* v. *United States*, 249 U. S. 211; *Frohwerk* v. *United States*, 249 U. S. 204; *Chaplinsky* v. *New Hampshire*, 315 U. S. 568.

[8] *Reynolds* v. *United States*, 98 U. S. 145, 161 *et seq.*

[9] An *obiter dictum* contained in the opinion of the court, unwittingly perhaps, summarizes the power of the police to enter a building more narrowly than is justified by existing law. A law enforcement officer may enter a building and arrest without a warrant a person found therein, if the officer has reasonable ground to believe that this person has committed a felony. *Morton* v. *United States*, 79 App. D. C. 329; U. S. Code, Title 18 (new) sec. 3053.

ways recognized that the sanctity of the home is not absolute, but is subject to certain limitations.

The right of inspection in the interest of public safety and public health is one of these qualifications. As was stated in *Hubbell* v. *Higgins*, 148 Iowa 36, 46—

[fol. 46] "The power of the Legislature to provide for inspection of premises in the interest of public safety and the public health is so well established that we will not enter upon a discussion of it. The right of inspection is incidental to the police power, and counsel cite no case wherein it was ever held that the exercise of such power violates any constitutional right of the citizen."

In conclusion, I am of the opinion that the Fourth Amendment relates only to searches and seizures in connection with criminal prosecutions or enforcement of penalties, and does not affect inspections conducted in the course of the administration of statutes and regulations intended to promote public health or public safety. Consequently the statutes and regulations involved in this case are valid; the health inspectors of the District of Columbia had the right to enter respondent's home without a warrant for the purpose of inspection; and, accordingly, the judgment of the Municipal Court of Appeals should be reversed.

[fol. 47] [File endorsement omitted.]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1949

No. 10092

DISTRICT OF COLUMBIA, Appellant,

vs.

GERALDINE LITTLE, Alias Mildred Parker, Appellee

On Appeal from the Municipal Court of Appeals for the District of Columbia

Before Prettyman and Proctor, JJ., and Alexander Holtzoff, District Judge, Sitting by Designation

JUDGMENT—Filed August 1, 1949.

This cause came on to be heard on the transcript of the record from the Municipal Court of Appeals for the District of Columbia, and was argued by counsel.

On consideration whereof, it is Ordered and Adjudged by this Court that the judgment of the said Municipal Court of Appeals on appeal in this cause be, and the same is hereby, affirmed.

Dated August 1, 1949.

Per Circuit Judge Prettyman.

[fol. 48] [File endorsement omitted.]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

DESIGNATION OF RECORD—Filed August 5, 1949.

To the Clerk of the United States Court of Appeals for the District of Columbia Circuit:

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for Writ of Certiorari in the above entitled case, and include therein the following:

1. Joint Appendix.
2. Minute entry of argument.

3. Opinion of the Court, and dissenting opinion of Judge Holtzoff.
4. Judgment of the Court.
5. This Designation.
6. Clerk's Certificate.

Vernon E. West, Corporation Counsel, D. C.; Chester H. Gray, Principal Assistant Corporation Counsel, D. C.; Edward A. Beard, Assistant Corporation Counsel, D. C., Attorneys for Appellant, District Building.

I certify that on August 5th, 1949, I mailed, postage prepaid, copy of foregoing motion to Messrs. Jeff Busby and Jeff Busby, Jr., attorneys for appellee, Washington Loan and Trust Building, Washington, D. C., their last known address.

Chester H. Gray, Principal Assistant Corporation Counsel, D. C.

[fol. 49] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 50] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI.—Filed November 7, 1949.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.